

Federal Communications Commission

DA 00-494

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 99-256
Table of Allotments,) RM-9527
FM Broadcast Stations.)
(Refugio and Taft, Texas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 23, 2000

Released: March 3, 2000

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by Pacific Broadcasting of Missouri, L.L.C. ("Pacific"), the Commission has before it for consideration the Notice of Proposed Rule Making, 14 FCC Rcd 11609 (1999), requesting the substitution of Channel 293C2 for Channel 291C3 at Refugio, Texas, and reallocation of Channel 293C2 from Refugio, Texas, to Taft, Texas, as a first local service.¹ Pacific requests modification of the license for Station KTKY to specify operation on Channel 293C2 at Taft as the community of license. Pacific also requests the allotment of Channel 291A at Refugio. Pacific filed supporting comments in which it reaffirmed its interest in Channel 293C2 at Taft and Channel 291A at Refugio. WAB Broadcasting ("WAB") filed comments supporting the allotment at Refugio.

2. The proposed reallocation of Channel 293C2 from Refugio to Taft, Texas, was filed pursuant to the provisions of Section 1.420(I) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recond. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community"). In the Change of Community License Order, the Commission expressed its concern with the potential migration of stations from rural areas to urban areas. The Commission relies on criteria established in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), to determine whether a community should be awarded a first local service preference.² Although Taft is not located in an Urbanized Area, the

¹ An application for modification of KTKY to specify operation on Channel 293C3 at Refugio and to relocate the Station's transmitter site is currently pending (BPH-980608IB).

² These factors are: (1) signal population coverage; (2) the size of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city.

proposed 70 dBu contour of Station KTKY(FM) will encompass more than 50% of the Corpus Christi Urbanized Area requiring a showing that Taft is sufficiently independent of Corpus Christi to justify a first local service preference. See Headland, Alabama and Chatahoochee, Florida, 10 FCC Rcd 10352 (1995). We believe that Pacific has provided sufficient information supporting Taft's independence from the Corpus Christi Urbanized Area and that the community is deserving of a first local service preference.³

3. As explained in the Notice, Pacific requested the substitution of Channel 293C2 for Channel 291C3 at Refugio and reallocation of Channel 293C2 to the community of Taft as a first local service under priority (3) of the allotment priorities.⁴ Pacific acknowledged that while its proposal would provide a first local aural transmission service to the larger community of Taft, the proposal would remove the sole local operating service from Refugio. In support of this removal and to ensure continued service at Refugio, Pacific requested the allotment of Channel 291A at Refugio and stated it would file an application for Channel 291A and simultaneously commence program tests on Channel 293C2 at Taft and on a channel in Refugio assuming no other applicant is awarded a construction permit for a channel at Refugio. Pacific pointed out that a pending rule making proceeding proposing the allotment of Channel 263A to Refugio could also provide additional local service for the community.

4. Based upon the information presented in this proceeding, we believe the public interest would be served by substituting Channel 293C2 for Channel 291C3 at Refugio and reallocating Channel 291C3 from Refugio to Taft, Texas, since it would result in a preferential arrangement of allotments. Reallocation of Channel 293C2 to Taft is entitled to consideration as a first local service. Specifically, Taft is an incorporated city in San Patricio County located approximately 15 miles from Corpus Christi, Texas. Taft is separated from Corpus Christi by the communities of Gregory and Portland and is further separated from Corpus Christi by the Nueces Bay which is approximately three miles wide. According to the 1990 U.S. Census, Taft has a population of 5,234 people and the city has identifiable

³ Pacific provided the following information about the community of Taft supporting its identity as an independent community. Taft is an incorporated city in San Patricio County located approximately 15 miles from Corpus Christi, Texas. Taft is separated from Corpus Christi by the communities of Gregory and Portland and is further separated from Corpus Christi by the Nueces Bay which is approximately three miles wide. According to the 1990 U.S. census, Taft has a population of 5,234 people and the city has identifiable boundaries. Taft has its own city government consisting of an elected Mayor and City Counsel. There is a full-time City manager, a Police Department and Fire Department and four schools. Taft has its own newspaper, the Taft Tribune, its own telephone book and separate zip code (78390). Taft is an agricultural community which supports its local businesses, senior citizens home, and has its own medical and dental professional buildings. Local businesses serve the residents of Taft and advertise in the Taft Tribune. Many residents work in the Taft Independent School district or other businesses located in and around Taft and more than 400 people work in the Central City of Taft.

⁴ The FM Allotment priorities are: (1) First full-time aural service; (2) Second full-time service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

boundaries. Taft has its own city government consisting of an elected Mayor and City Counsel. There is a full-time City Manager, a Police Department and Fire Department and four schools. Taft has its own newspaper, the Taft Tribune, its own telephone book and separate zip code (78390). Taft is an agricultural community which supports its local businesses, senior citizens home, and has its own medical and dental professional buildings. Local businesses serve the residents of Taft and advertise in the Taft Tribune. Many residents work in the Taft Independent School District or other businesses located in and around Taft and more than 400 people work in the Central City of Taft.

5. In addition to the fact that this reallocation will result in the larger community having a first local service, the upgrade and reallocation of Station KTKY from Refugio to Taft results in an increase of over 280,000 people receiving 60 dBu service from KTKY. While Pacific has shown that approximately 1,000 people would lose service from Station KTKY, a staff engineering analysis confirms that no white or gray areas would be created and that the entire loss area is served with five or more full-time reception services. Moreover, most of the people in the loss area will receive replacement service from the recently allotted Channel 263A at Refugio as well as Channel 291A. In addition, Station KTKY will continue to provide service with a 60 dBu contour over Refugio following its move to Taft.

6. Finally, the change of community of license for Station KTKY will not result in the removal of Refugio's sole local aural service because we have already allotted Channel 263A to Refugio⁵ and will allot Channel 291A to the community in this proceeding. Pacific has stated its willingness to file an application for Channel 291A at Refugio and to commence program tests simultaneously on Channel 293C2 at Taft and Channel 291A at Refugio. Pacific has also committed to filing an application for Channel 263A at Refugio should that channel be made available for application prior to Channel 291A. To ensure that local service will continue to be provided to Refugio, we will condition the grant of an authorization to operate Station KTKY on Channel 293C2 at Taft upon activation of service at Refugio either on Channel 263A or 291A. See Llano and Marble Falls, TX, 12 FCC Rcd 809 (1997). In comments, Pacific has requested that activation of Channel 293C2 at Taft not be conditioned on commencement of service at Refugio. Pacific states that it is not backing away from its commitment to provide local service at Refugio but is concerned with the possible delay in providing service to the community of Taft as service may be delayed for years at Refugio if the frequencies are required to be awarded by way of auction.⁶ We deny Pacific's request. The Commission has specifically stated that the public has a legitimate expectation that existing service will continue, and that this expectation is a factor to be weighed independently against the service benefits that may result from reallocating a channel. We have weighed the factors and are granting Pacific's reallocation request because of the public interest benefits of providing first local service to both Taft and Refugio. However, we are

⁵ Channel 263A was allotted to Refugio in MM Docket No. 98-165, DA No. 99-490, released March 12, 1999.

⁶ See Closed Broadcast Auctions: Notice of Filing Requirements for Auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits, DA No. 99-1346, released July 9, 1999.

compelled to condition the the reallocation of Channel 293C2 to Taft on activation of a channel at Refugio to insure continued service at Refugio.

7. Channel 293C2 can be allotted to Taft, Texas, in compliance with the Commission's minimum distance separation requirements at Pacific's specified site.⁷ In accordance with Section 1.420(i) of the Commission's Rules, we modify the license for Station KTKY to specify operation on Channel 293C2 at Taft, Texas, in lieu of Channel 291C3 at Refugio, Texas, as its new community of license. We shall also allot Channel 291A to Refugio, Texas, at a site 8.1 kilometers (5.0 miles) northwest of the community.⁸ Since Refugio and Taft are located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government has been obtained for these allotments.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 17, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Refugio, Texas	263A, 291A
Taft, Texas	293C2

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Pacific Broadcasting of Missouri, L.L.C., for Station KTKY, Channel 291C3, Refugio, Texas, IS MODIFIED to specify operation on Channel 293C2 at Taft, Texas, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

(c) Operation of Station KTKY on Channel 293C2

⁷ The coordinates for Channel 293C2 at Taft are 27-52-00 and 97-13-08.

⁸ The coordinates for Channel 291A at Refugio are 28-21-58 and 97-19-11.

in Taft, Texas, including program test operation pursuant to Section 73.1620, will not be commenced until such time as express authorization from the Commission has been granted. Such authorization will not be granted until a construction permit has been issued for Channel 263A or Channel 291A at Refugio, Texas, and activation of service has been initiated on Channel 263A or Channel 291A at Refugio.

10. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Pacific Broadcasting of Missouri, L.L.C., licensee of Station KTKY, is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license from Refugio to Taft, Texas, and substitute Channel 291C3 for Channel 293C2.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions relating to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau